

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN RE:

LEE DAVID MORK, JR.,

Case No. 23-12218-cjf

Chapter 7

Debtor.

LEE DAVID MORK, JR.,

Plaintiff,

v.

Adversary Case No. 24-00014

U.S. DEPARTMENT OF EDUCATION,

Defendant.

ANSWER

Defendant U.S. Department of Education (Education), by Timothy M. O'Shea, United States Attorney for the Western District of Wisconsin, and by Theresa M. Anzivino, Assistant United States Attorney, answers the numbered paragraphs of Plaintiff Lee David Mork, Jr., Complaint as follows:

I. JURISDICTION & VENUE

Adversary Complaint ¶ 1: This Court has jurisdiction over this matter pursuant to 28 U.S.C. Secs. 1334 and 157(b).

ANSWER: Education admits.

Adversary Complaint ¶ 2: Venue is proper pursuant to 28 U.S.C. § 1409 because this proceeding arises in and relates to a bankruptcy case pending in this district.

ANSWER: Education admits.

Adversary Complaint ¶ 3: This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

ANSWER: Education admits.

Adversary Complaint ¶ 4: Bankruptcy Rules 7001 (6), (7), and (9) require an action of this nature to be filed as an adversary proceeding.

ANSWER: Education admits.

Adversary Complaint ¶ 5: Plaintiff consents to the entry of a final judgment by a United States Bankruptcy Court judge.

ANSWER: Education admits.

Adversary Complaint ¶ 6: Plaintiff filed his petition for relief under Chapter 7 of the Bankruptcy Code on December 11, 2023 (the "Chapter 7 Case").

ANSWER: Education admits.

II. INTRODUCTION

Adversary Complaint ¶ 7: Plaintiff seeks to discharge student loan debts that Plaintiff owes Defendants pursuant to 11 U.S.C. §523(a)(8).

ANSWER: Education admits that Plaintiff seeks to discharge the student loan debts that he owes Education pursuant to 11 U.S.C. § 523(a)(8).

III. GENERAL ALLEGATIONS

Adversary Complaint ¶ 8: Plaintiff is an adult resident of Wisconsin, an unmarried individual, and veteran who resides at 601 Sand Pearl Lane, APT 523, Madison, Wisconsin 53711.

ANSWER: Education admits that the address listed matches the information listed in the Plaintiff's bankruptcy case. As for the remaining allegations, Education lacks sufficient knowledge or information to form a belief as to the truth of those allegations and, therefore, denies them.

Adversary Complaint ¶ 9: Plaintiff is a citizen of Wisconsin residing in the Western District of Wisconsin.

ANSWER: Education admits that this information matches that of the information listed in the Plaintiff's bankruptcy case.

Adversary Complaint ¶ 10: United States Department of Education ("DOE") is a Department of the United States government with a principal office at 400 Maryland Avenue SW, Washington, D.C. 20202.

ANSWER: Education admits.

Adversary Complaint ¶ 11: DOE is represented by Theresa M. Anzivino with a principal office at 222 West Washington Avenue, Suite 700, Madison Wisconsin 53703.

ANSWER: Education admits.

Adversary Complaint ¶ 12: DOE is the holder of the student loans which Plaintiff seeks to discharge.

ANSWER: Education admits.

The Student Loan

Adversary Complaint ¶ 13: The outstanding balance of the student loans which Plaintiff seeks to discharge in this adversary proceeding is about \$190,269.00 ("Student Loans").

ANSWER: Education admits that Plaintiff has an outstanding student loan balance but affirmatively alleges that the outstanding balance, as of June 2024, is approximately \$193,170, comprised of approximately \$189,316, in principal, and approximately \$3,854, in interest.

Adversary Complaint ¶ 14: The calculated monthly payment for Plaintiffs Student Loans based on a Standard Repayment Plan ("Standard Payment") is estimated to be about \$2,018.00 according to the Federal Student Aid Loan Repayment Simulator, attached herein as Exhibit A.

ANSWER: Education admits only that Exhibit A shows a calculated monthly payment of \$2,018. As to all remaining allegations, Education denies and affirmatively alleges that Plaintiff's monthly payment under Education's Standard Repayment plan is \$1,988.37.

Education

Adversary Complaint ¶ 15: Plaintiff obtained student loans from DOE for the purpose of obtaining a bachelor's degree from Herzing University in criminal justice studies. Plaintiff attended Herzing University and graduated in 2015.

ANSWER: Education admits that its records show Plaintiff attended Herzing University. As to all remaining allegations, Education lacks sufficient knowledge or

information to form a belief as to the truth of those allegations and, therefore, denies them.

Adversary Complaint ¶ 16: After receiving his bachelor's degree in criminal justice studies, Plaintiff was unable to obtain employment in his field of study. Plaintiff elected to pursue a master's degree in public safety in the hopes of bolstering his marketability and employment prospects. Plaintiff received his master's degree in public safety from Herzing University in 2019.

ANSWER: Education admits that its records show Plaintiff attended Herzing University. As to all remaining allegations, Education lacks sufficient knowledge or information to form a belief as to the truth of those allegations and, therefore, denies them.

Adversary Complaint ¶ 17: Plaintiff utilized the Student Loans to pay for all his educational expenses related to his bachelor's and master's degree programs.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Employment

Adversary Complaint ¶ 18: 18. Plaintiff has been gainfully employed as of December of 2023, but not within the field of his college degrees. Prior to the filing of Plaintiffs petition, Plaintiff was unemployed for the preceding five months.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 19: 19. Plaintiff has searched for jobs within his desired field and where he could utilize his undergraduate and graduate degrees. Such jobs include working as an emergency management and response coordinator, community service officer, correctional officer, emergency dispatcher, public safety telecommunicator, customs compliance, and security guard.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 20: Plaintiff has applied for about 50-70 jobs across several industries within the scope of his field of education but has not been selected for any of these positions.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 21: Plaintiff is currently employed as a Nursing Assistant at the William S. Middleton Veterans' Hospital, located in Madison, Wisconsin.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 22: Plaintiff is currently seeking his associate degree in nursing in the hopes of transition into a full-time nursing position at his current place of employment. Plaintiff is attending Madison Area Technical College for this degree and is seeking reimbursement from his employer for the expenses incurred in pursuing this degree.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Financial and Life Circumstances – Minimal Standard of Living

Adversary Complaint ¶ 23: Plaintiff does not have the present ability to pay the Student Loans while maintaining a minimal standard of living for himself if forced to repay the Student Loans.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 24: Plaintiff, prior to filing a petition under Chapter 7, was unemployed and relied on rental and food assistance to provide for his expenses.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 25: The Plaintiffs income and expenses are shown in the Plaintiffs bankruptcy schedules I and J, attached hereto and incorporated herein as Exhibit B.

ANSWER: Education admits only that Plaintiff completed bankruptcy schedules I and J, which appear to be included as Exhibit B to his Complaint. As to whether that information aligns with his current and actual income and expenses or represents what his income and expenses will be in the future, Education lacks sufficient knowledge or information to form a belief as to the truth of such allegations and, therefore, denies them.

Adversary Complaint ¶ 26: Plaintiffs monthly household living expenses do not exceed the standards as set forth by the Internal Revenue Service Collection Financial Standards (the "National Standards").

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 27: Plaintiff has resided at his current address in Wisconsin since May of 2023.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 28: On average, Plaintiffs monthly expenses exceed his monthly income since Plaintiff no longer receives public assistance and must rely solely on his income for support.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 29: Plaintiff works part-time and is seeking to be gainfully employed full-time upon the completion of his associate degree program.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Future Inability to Pay

Adversary Complaint ¶ 30: Plaintiffs present inability to pay is likely to persist in the future, preventing the Plaintiff from maintaining a minimal standard of living for

a significant portion of the repayment period if forced to repay the Student Loans, due to the following:

- a. Plaintiff has been unable to obtain employment in the fields in which he is educated in;
- b. Plaintiffs income is unlikely to increase to an amount necessary to make sufficient payments on the Student Loans if Plaintiff were to seek a position for which he is educated for, with such position resulting in an income at or below Plaintiffs current income from employment;
- c. Plaintiff's completion of an associate degree in nursing may modestly increase his income, though such an increase would be insufficient to make adequate payments on the Student Loans.
- d. It is unlikely that Plaintiff could complete another degree or achieve a higher salary for doing so in his new career path, given the costs of attending higher education together with the cost of his Standard Payment each month or the interest on his Student Loans, along with his age and the physical demands of his new career path.
- e. Plaintiff owns modest personal belongings and owns no assets worth a significant amount other than his 2009 Yamaha Roadster motorcycle, which at the time of filing was in the process of being repossessed by the secured creditor to whom payments are owed. Plaintiff intends to surrender his motorcycle upon the conclusion of his bankruptcy case.

Plaintiff recently purchase a vehicle post-petition to enable him to commute and retain his employment.

ANSWER: As to all allegations in paragraph 30, Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Good Faith Effort to Repay

Adversary Complaint ¶ 31: Plaintiff has made good faith efforts to earn income, manage expenses and repay the Student Loans.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 32: Plaintiff has obtained employment outside the skillset of his criminal justice studies and public safety degrees in order to maximize his income.

ANSWER: Education lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, denies them.

Adversary Complaint ¶ 33: Plaintiff has made voluntary payments on the Student Loans as they are due.

ANSWER: Education admits only that its records show that Plaintiff has made voluntary payments on his student loans with Education.

Adversary Complaint ¶ 34: Upon information and belief, Plaintiff has never been in default on the Student Loans.

ANSWER: Education admits.

Adversary Complaint ¶ 35: Plaintiff is currently participating in the Income Driven Repayment Program offered by DOE, with payments resuming in October 2024.

ANSWER: Education admits only that Plaintiff is participating in an Income Driven Repayment Program. Education affirmatively alleges that multiple factors could influence whether Plaintiff's payments will resume in October 2024, so Education lacks at this time sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 35 and, therefore, denies them.

IV. CLAIM FOR RELIEF - DETERMINATION OF DISCHARGEABILITY OF STUDENT LOAN OBLIGATIONS, 11 U.S.C. § 523(8)

Adversary Complaint ¶ 36: Plaintiff hereby realleges and incorporate by reference the allegations set forth in paragraphs 1 through 35.

ANSWER: Education herein answers by reference all allegations set forth in paragraphs 1 through 35.

Adversary Complaint ¶ 37: Plaintiff is entitled to discharge of the Student Loans owed to Defendant in whole because repayment would constitute an "undue hardship" on Plaintiff.

ANSWER: Education denies.

Adversary Complaint ¶ 38: Further, Plaintiff meets the standard for discharge of the Student Loans under § 523(a)(8) of the Bankruptcy Code and the test set forth under *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987), as adopted by the Seventh Circuit in *In re Roberson*, 999 F.2d 395 (7th Cir. 1993).

ANSWER: Education denies.

GENERAL DENIAL

Pursuant to Fed. R. Civ. P. 8(b)(3) (incorporated into adversary proceedings by Fed. R. Bankr. P. 7008), Education denies all allegations in the Complaint that Education has not otherwise specifically admitted or denied.

DEFENSES

1. Plaintiff cannot meet the requirements for proving undue hardship for purposes of discharging his student loans with Education.

Wherefore, Education respectfully requests that the Court:

1. Determine that Plaintiff's student loans with Education are not dischargeable and should remain excepted from discharge; and
2. Award Education such other and further relief as may be just and appropriate.

Dated this 6th day of June 2024.

Respectfully submitted,
TIMOTHY M. O'SHEA
United States Attorney

By:
s/ Theresa M. Anzivino
THERESA (ESA) M. ANZIVINO
Assistant United States Attorney
Western District of Wisconsin
222 West Washington Avenue, Suite 700
Madison, Wisconsin 53703
Telephone: (608) 264-5158